

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DANIEL MICHAELS,

Plaintiff,

v.

Cause No. 1:21-cv-00764

AAT TRUCKING, LLC and JUAN DURAN,

Defendants.

AAT TRUCKING, LLC AND JUAN DURAN’S JOINT NOTICE OF REMOVAL

Subject to any and all Federal Rule of Civil Procedure 12(b)(6) defenses, and pursuant to sections 1441 and 1446, Title 28 of the United States Code, AAT Trucking, LLC (“AAT Trucking”) and Juan Duran respectfully file this Notice of Removal, removing Cause No. D-202-CV-2021-04256 from the Second Judicial District Court, Bernalillo County, New Mexico, to the United States District Court for the District of New Mexico.

I. Procedural Background.

On July 14, 2021, Plaintiff Daniel Michaels (“Plaintiff”) filed his Complaint for Personal Injury and Damages (“Complaint”) in the Second Judicial District Court, Santa Fe County, New Mexico, Cause No. D-202-CV-2021-04256, *Daniel Michaels v. AAT Trucking and Juan Duran*.

Plaintiff served the Complaint and summons on AAT Trucking and on Juan Duran via process server. Juan Duran was served by process server on July 19, 2021, while AAT Trucking received the Complaint and summons via facsimile on July 22, 2021. Then, on July 21, 2021, Plaintiff filed his First Amended Complaint. Ex. A, Pl.’s 1st Am. Compl. (July 21, 2021) (“First

Amended Complaint”). On July 22, 2021, Plaintiff served the First Amended Complaint on Juan Duran via process server. On July 26, 2021, the summons and first Amended Complaint were served upon AAT Trucking by certified mail.

28 U.S.C. § 1446(b) provides that “a defendant must file a notice of removal within 30 days *after* the date on which the defendant is served with an ‘initial pleading.’” *Campbell v. Oxford Elecs., Inc.*, No. 07-0541, 2007 WL 2011484, *1 (E.D. Pa. July 5, 2007) (emphasis in original).

The removal of this matter to federal court, therefore, is timely. *See* 28 U.S.C. § 1446(b) (prescribing time to effectuate removal to federal court).

II. Removal Is Properly Based on Diversity Jurisdiction.

Subject matter jurisdiction, i.e. diversity jurisdiction exists pursuant to section 1332, Title 28 of the United States Code.

A. Citizenship of the Parties.

Plaintiff “is and was a resident of the State of New Mexico at all times relevant to this Complaint.” Pl.’s 1st Am. Compl., ¶ 5.

Juan Duran is a resident and citizen of the State of Texas. *See* Pl.’s 1st Am. Compl., ¶ 6 (alleging Mr. Duran “is and was a resident of the State of Texas at all times relevant to this Complaint”).

AAT Trucking’s members and its organizer are residents and citizens of the State of Texas. Ex. B, Texas Secretary of State Records. AAT Trucking, therefore, is a resident and citizen of the State of Texas. *See Lucero v. Carlsbad Med. Ctr., LLC*, No. 1:18-00148 WJ/LF, 2018 U.S. Dist. LEXIS 92918, at *4-*5 (D.N.M. June 1, 2018) (“Under Tenth Circuit precedent, the citizenship of

limited liability companies is determined by the citizenship of their members and not their principal place of business”)l *see also* Pl.’s 1st Am. Compl., ¶ 7 (alleging AAT Trucking “is a privately-owned entity based out of El Paso, Texas”).

B. Legal Standard for Diversity Jurisdiction.

Pursuant to section 1332, the district courts have original jurisdiction of all civil actions arising between citizens of different States and citizens of a state and citizens or subjects of a foreign state, “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs[.]” 28 U.S.C. § 1332(a)(1)-(2).

Diversity must exist at the time a lawsuit is commenced and is not lost by a party’s change in citizenship. *Leavitt v. Scott*, 338 F.2d 749, 751 (10th Cir. 1964).

C. The amount in controversy is satisfied.

The amount in controversy exceeds \$75,000, excluding costs and interest, as required by section 1332(a).

D. The removing parties consent to one another’s removal.

Defendant Juan Duran and Defendant AAT Trucking, LLC each consent to the removal of this matter to the United States District Court for the District of New Mexico.

III. Proper Venue and Compliance with the Removal Procedure.

Pursuant to section 1441(a), venue of the removed action is proper in this Court as the district embracing the place where the State action is pending.

AAT Trucking will give parties written notice of the filing of this Notice of Removal as required by section 1446(d). AAT Trucking will also promptly file a copy of this Notice of

Removal with the District Court Clerk for the Second Judicial District Court, Bernalillo County, New Mexico.

True and correct copies of all process, pleadings, and any Orders served in the State court action are being filed with this Notice of Removal as required by section 1446(a). Ex. A, State Court R.

Accordingly, AAT TRUCKING, LLC, pursuant to and in conformity with the requirements set forth in section 1446, respectfully removes Cause No. D-202-CV-2021-04256 from the Second Judicial District Court, Santa Fe County, New Mexico, *Daniel Michaels v. AAT Trucking and Juan Duran*, to the United States District Court for the District of New Mexico.

Respectfully submitted,

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Attorneys for AAT Trucking, LLC, and
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the parties through their counsel of record, as follows, on this 17th day of August of 2021.

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- ☐ *Via Electronic Service*
- ☐ *Via Facsimile Transmission*
- ☒ *Via E-Mail*
- ☐ *Via Certified Mail, RRR*
- ☐ *Via USPS First Class*
- ☐ *Via Hand Delivery*
- ☐ *Via Commercial Delivery Service*

Attorney for Plaintiff

/s/ Yosef W. Abraham
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